



DEPARTMENT OF TRANSPORTATION

4910-9X

Office of the Secretary

49 CFR Part 95

[Docket No. DOT–OST–2013–0015]

RIN 2105–AE22

Advisory Committees (RRR)

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule removes DOT’s advisory committee regulations. The DOT is removing the regulations because they have been made obsolete by other laws, regulations, and agency procedures.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

On January 12, 1968, the Department published a final rule to provide uniform regulations at 49 CFR part 95, relating to the formation and use of advisory committees. *See* 33 FR 466. Among its major provisions, part 95 set forth regulations governing the use of advisory committees, industry advisory committees, committee meetings, and conflicts of interest. This rule was published pursuant to Executive Order 11007, dated

February 26, 1962, which prescribed general rules for the formation and use of advisory committees by departments and agencies of the Government, and authorized Department heads to prescribe additional regulations consistent with the order. Part 95 was amended 4 months after its issuance to allow the Secretary of Transportation, or his or her designee, to waive the requirements relating to the chairmanship of industry committees under certain circumstances.¹

Since the issuance of part 95, the universe surrounding advisory committees has changed in several notable ways. Executive Order 11007 has been superseded.² Congress passed the Federal Advisory Committee Act of 1972 (FACA) (Pub. L. 92–463; 5 U.S.C. App. 2). The FACA formalizes a process for the establishment, operation, oversight, and termination of Federal advisory committees. To further transparency in Government, Congress passed the Government in the Sunshine Act of 1976.³ The Act applies to Federal advisory committees⁴ and specifies situations when Federal agencies can close Federal advisory committee meetings to the public.⁵ Additionally, DOT issued a departmental order that sets forth internal policies and procedures relating to committee

¹ 33 FR 6913 (May 8, 1968) (amending 49 CFR 95.11 to provide authority for the Secretary of Transportation or his or her designee to waive the requirements of § 95.11(b) relating to the chairmanship of industry advisory committees whenever compliance with those requirements would interfere with the proper functioning of the committee or would be impracticable, adequate provisions are made to otherwise ensure Government control of the committee's operation, the waiver would be in the public interest, and the meetings of the committee would be conducted in the presence of a full-time salaried officer or employee of the Government).

² See Exec. Order No. 11,769 (1974); Exec. Order No. 11,686 (1972); Exec. Order No. 11,671 (1972).

³ 5 U.S.C. 552b.

⁴ 5 U.S.C. 552b(a).

⁵ 5 U.S.C. 552b(c).

management.⁶ Subsequently, Executive Order 12024 delegated to the Administrator of the General Services Administration (GSA) all of the functions vested in the President by FACA.⁷ The GSA has issued regulations relating to Federal advisory committees, which were most recently amended in 2001.⁸

Notwithstanding these changes, our departmental regulations governing advisory committees have substantively remained unchanged since their early amendment in 1968.⁹ As a result, these regulations are now obsolete, unnecessary, duplicative, or inconsistent with FACA's progeny. We are removing part 95 because the current body of law (e.g., FACA, GSA regulations, DOT Order 1120.3B) governing the use and management of Federal advisory committees are sufficient. Revising part 95 would only result in unnecessary duplication that would simply reiterate the provisions found in other law.

Under the Administrative Procedure Act, an agency may waive the normal notice and comment procedures if the action is a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(3)(A). Since part 95 contains obsolete departmental procedures

⁶ DOT Order 1120.3B (Sept. 23, 1993).

⁷ Exec. Order No. 12,024 (Dec. 1, 1977). The Reorganization Plan of 1977 transferred advisory committee functions from OMB to GSA.

⁸ 66 FR 37728 (July 19, 2001) (amending GSA's Federal advisory committee regulations at 41 CFR parts 101-6 and 102-3).

⁹ Part 95 was updated twice after 1968. *See* 35 FR 5331 (March 31, 1970) (adding the Urban Mass Transportation Administration (UMTA) and National Highway Safety Board (NHSB); 36 FR 431 (January 13, 1971) (updating part 95 to reflect the abolishment of NHSB and the establishment of the National Highway Traffic Safety Administration). However, part 95 has not since been updated to replace UMTA with the Federal Transit Administration and Federal Motor Carrier Safety Administration. In addition, part 95 has also not been updated to show that the U.S. Coast Guard is no longer housed in DOT or to add the Maritime Administration, Pipeline and Hazardous Materials Safety Administration, and Research and Innovative Technology Administration.

relating to advisory committees, notice and comment is not necessary. For the same reason, the rule can become effective immediately. *See* 5 U.S.C. 553(d)(1).

REGULATORY ANALYSES AND NOTICES

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The DOT has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of DOT's regulatory policies and procedures. Since this rulemaking removes obsolete regulations relating to departmental procedure and practice, the DOT anticipates that this rulemaking will have no economic impact.

Additionally, this action fulfills the principles of Executive Order 13563, specifically those relating to retrospective analyses of existing rules. This rule is being issued as a result of the reviews of existing regulations that DOT periodically conducts. The DOT is streamlining its regulations by removing a rule that is outmoded and ineffective.

Regulatory Flexibility Act

Since notice and comment rulemaking is not necessary for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601–612) do not apply. However, DOT has evaluated the effects of this action on small entities and has

determined that the action would not have a significant economic impact on a substantial number of small entities because it has no substantive impact on any entities.

Unfunded Mandates Reform Act of 1995

This final rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) as it will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$148.1 million or more in any 1 year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the DOT has determined that this action would not have a substantial direct effect or federalism implications on the States and would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Therefore, consultation with the States is not necessary.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for

each collection of information they conduct, sponsor, or require through regulations. The DOT has analyzed this final rule under the PRA and has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The DOT has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The DOT has analyzed this action under Executive Order 13175 and believes that the action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The DOT has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The DOT has determined that this is not a significant energy action under that order since it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

List of Subjects in 49 CFR Part 95

Advisory committees.

Issued on: July 25, 2013

Anthony R. Foxx,

Secretary.

For the reasons stated in the preamble and under the authority of 49 U.S.C. 322 , the Office of the Secretary amends 49 CFR by removing and reserving part 95.

PART 95—[REMOVED AND RESERVED]

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